

### **REMARKS/ARGUMENTS**

The Examiner rejects claims 56-89 and 104-112 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. 5,916,100 and claims 2-10 of U.S. 6,082,064.

Filed concurrently herewith are two terminal disclaimers overcoming this rejection.

The Examiner rejects Claims 56-60, 62-64, 67-74, 79-85, 87, 104, 106-108, and 110-112 under 35 U.S.C. § 102(b) as being anticipated by Ting (U.S. 4,840,004) and claims 56, 61, 67, 69, 79-80, and 104-112 under 35 U.S.C. § 102(b) as being anticipated by Ting (U.S. 5,452,552).

Applicant respectfully traverses the Examiner's rejection. The '004 and '552 patents fail to teach and suggest at least the following italicized features of the rejected independent claims:

56. A wall system, comprising:  
at least a first perimeter framing member configured to hold at least a first wall panel;  
at least a second perimeter framing member configured to hold at least a second wall panel, wherein the first and second perimeter framing members engage one another, wherein at least one of the first and second perimeter framing members defines a recess extending inwardly relative to exterior surfaces of the first and second wall panels, wherein at least one of the first and second perimeter framing members comprises a plurality of drainage holes, wherein the plurality of drainage holes are in fluid communication with a gutter located in an interior region behind the first and second panels and the first and second perimeter framing members, and wherein the gutter collects and provides to the drainage holes moisture located in the interior region for discharge into an exterior environment located exteriorly of the first and second perimeter framing members and first and second wall panels; and  
a capillary break positioned on at least one of the first and second perimeter framing members, wherein the capillary break is spaced from the plurality of drainage holes and, along with surfaces of the recess, defines a circulating chamber located interiorly of the capillary break, whereby entry of terrestrial fluids into at least one of the plurality of drainage holes is impeded, wherein a free end of the capillary break is separated from one of the first and second perimeter framing members by a gap through which terrestrial fluids pass to enter the circulating chamber, *wherein a lower surface of the circulating chamber is contoured to permit terrestrial fluids collected in the circulating chamber in the form of a liquid to flow as a liquid through the gap along the lower surface for discharge into the exterior environment, wherein the plurality of drainage holes are located above the free end of the*

*capillary break, and wherein the capillary break extends downwardly from the at least one of the first and second perimeter framing members.*

67. A wall system, comprising:

at least a first perimeter framing member configured to hold at least a first wall panel;

at least a second perimeter framing member configured to hold at least a second wall panel, wherein the first and second perimeter framing members engage one another, wherein at least one of the first and second perimeter framing members defines a recess extending inwardly relative to exterior surfaces of the first and second wall panels, wherein at least one of the first and second perimeter framing members comprises a plurality of drainage holes, wherein the plurality of drainage holes are in fluid communication with an interior region and discharge moisture located in the interior region into an exterior environment located exteriorly of the first and second perimeter framing members and first and second wall panels; and

a capillary break positioned on at least one of the first and second perimeter framing members, wherein the capillary break is spaced from the plurality of drainage holes and located between exterior surfaces of the first and second panels and the drainage holes, whereby entry of terrestrial fluids into at least one of the plurality of drainage holes is impeded, wherein the capillary break and walls of the recess define a circulating chamber located in the recess interiorly of the capillary break, wherein a free end of the capillary break is separated from one of the first and second perimeter framing members by a gap through which terrestrial fluids pass to enter the circulating chamber, *wherein a lower surface of the circulating chamber is contoured to permit terrestrial fluids collected in the circulating chamber in the form of a liquid to flow as a liquid along the lower surface and through the gap for discharge into the exterior environment, wherein the plurality of drainage holes are located above the free end of the capillary break, and wherein the capillary break extends downwardly from the at least one of the first and second perimeter framing members.*

79. A wall system, comprising:

at least a first perimeter framing member configured to hold opposing interior and exterior surfaces of at least a first wall panel;

at least a second perimeter framing member configured to hold opposing interior and exterior surfaces of at least a second wall panel, wherein the first and second perimeter framing members engage one another, wherein at least one of the first and second perimeter framing members defines a recess relative to exterior surfaces of the first and second wall panels, wherein at least one of the first and second perimeter framing members comprises a plurality of drainage holes, wherein

the plurality of drainage holes are in fluid communication with a gutter located in an interior region behind the first and second panels and the first and second perimeter framing members, and wherein the gutter collects and provides to the drainage holes moisture located in the interior region for discharge into an exterior environment located exteriorly of the first and second perimeter framing members and first and second wall panels; and

capillary break means positioned on at least one of the first and second perimeter framing members for redirecting flow of terrestrial fluids, wherein the capillary break is spaced from the plurality of drainage holes and, along with surfaces of the recess, defines a circulating chamber operable to impede entry of terrestrial fluids into the interior region, the circulating chamber being located interiorly of the capillary break means, wherein a free end of the capillary break means is separated from one of the first and second perimeter framing members by a gap through which terrestrial fluids pass to enter the circulating chamber and *wherein a lower surface of the circulating chamber is contoured to permit terrestrial fluids collected in the circulating chamber in the form of a liquid to flow, as a liquid, along the lower surface and through the gap for discharge into the exterior environment, wherein the plurality of drainage holes are located above the free end of the capillary break means, and wherein the capillary break means extends downwardly from the at least one of the first and second perimeter framing members.*

The Examiner's construction ignores the language of the various claims.

The '004 patent has at least the following deficiency:

(a) the fluid collected in the circulating chamber (identified by the Examiner as the area defined by 31 and the space where item 30 is located) is physically unable, due to intervention of item 30 (identified as a possible capillary break by the Examiner) from passing, in the form of a water film, through the gap (identified by the Examiner as the gap between the perimeter framing member 46 and capillary break (the part on left and below holes 37)), and inlet (identified by the Examiner as the area in which the reference number 31 is located in front of) and into the terrestrial or outer environment.

The '552 patent has at least the following deficiencies:

(a) the fluid collected in the circulating chamber (identified as item 26 by the Examiner) is physically unable, due to intervention of the part where holes 38 are located from passing, in the form of a water film, through the gap (identified by the Examiner as the gap between the perimeter

framing member 15 and capillary break 34), and inlet (identified by the Examiner as the area in which the reference number 24 is located) and into the terrestrial or outer environment.

(b) the interior regions, namely the areas 26 and inside of the perimeter framing member 21, in communication respectively with the drainage holes 38 and 68 are not positioned behind the first and second wall panels 19 and the first and second perimeter framing members 21 and 15.

(c) the plurality of drainage holes (those holes identified as item 38 by the Examiner) are not positioned above the free end of the capillary break.

For the foregoing reasons, Applicant believes that the pending claims are allowable over the '004 and '552 patents.

The dependent claims provide additional bases for finding allowance.

By way of example, Claims 57, 69, and 80 require an adjacent edge of a nearest drainage hole to be at least about 0.75 inches from the rear surface of the capillary break. Claims 59, 71, and 82 require, at any location along the capillary break, an adjacent edge of a nearest drainage hole to be at least about 0.25 inches from a rear surface of the capillary break. These dimensions are not specifically taught or suggested by the cited references.

Claims 58, 70, and 81 require the space between a free end of the capillary break and an opposing wall of the recess to have a first vertical cross-sectional area and another space between opposing walls of the recess at a point between the capillary break and the plurality of drainage holes to have a second vertical cross-sectional area, with the second vertical cross sectional area being at least about 150% of the first vertical cross sectional area. Claims 60, 72, and 83 require the centers of the plurality of drainage holes to lie along a common axis, with a distance of the drainage holes above a free end of the capillary break being at least about 125% of a distance from the free end of the capillary break to an adjacent, opposing surface of the recess. Claims 62, 74, and 85 are directed to the plurality of drainage holes being spaced at regular intervals along the at least one of the first and second perimeter framing members, with a height of the capillary break ranging from about 125 to about 200% of a distance between a free end of the capillary break and an adjacent, opposing surface of the recess. Claim 66, 78, and 89 are directed to the capillary break having a height and

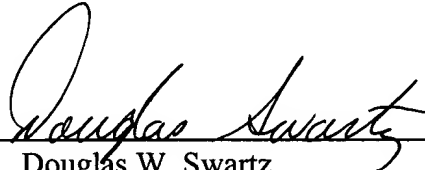
being separated by a gap from the first perimeter framing member, with the height being at least about 100% of the width of the gap and exterior surfaces of the first and second wall panels being at least substantially parallel and coplanar. These percentages are not specifically taught or suggested by the cited references.

Applicant has added new claims 112-119. Independent claim 112 is a combination of independent claim 56, intervening dependent claim 57, and allowable dependent claim 65; independent claim 114 a combination of independent claim 67 and allowable dependent claim 75; independent claim 115 a combination of independent claim 67, intervening dependent claim 69, and allowable dependent claim 77; independent claim 117 a combination of independent claim 79 and allowable dependent claim 86; and independent claim 118 a combination of independent claim 79, intervening dependent claim 80, and allowable dependent claim 88.

Based upon the foregoing, Applicants believe that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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